

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

ROBERT LEE HARRIS,	:	NO. 1:12-CV-00261
	:	
Petitioner,	:	
	:	
vs.	:	<b>OPINION AND ORDER</b>
	:	
WARDEN, SOUTHERN OHIO	:	
CORRECTIONAL FACILITY,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 18), Petitioner's Objections (doc. 23), and Respondent's Response (doc. 24). For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation to the extent that it TRANSFERS this matter to the Sixth Circuit Court of Appeals for a determination as to whether the district court may review it.

Petitioner brings a pro se Petition for a writ of habeas corpus (doc. 1), while acknowledging that his Petition is successive (doc. 23). Respondent moved to dismiss the Petition as successive, and further because it is time-barred, the federal claims were not properly exhausted, and Petitioner's claims lack merit (doc. 11).

The Magistrate Judge issued her Report and Recommendation that the Petition should be transferred to the Sixth Circuit as successive under 28 U.S.C. § 2244(b), and in the alternative, it

should be dismissed as time-barred (doc. 18). Having reviewed this matter, the Court finds no question that the Petition is successive, and therefore is not properly before this Court. Petitioner concedes it is successive, and as Respondent indicates, Petitioner has not established any new rule of constitutional law made retroactive to cases on collateral review or that the factual predicate of his claims was not previously discoverable through the exercise of due diligence (doc. 24).

Petitioner has neither argued nor otherwise demonstrated that the instant Petition is not successive within the meaning of 28 U.S.C. § 2244(b), nor has Petitioner made a prima facie showing under 28 U.S.C. § 2244(b)(2) that the conditions allowing for review of new claims have been met. The Court therefore concludes that Magistrate Judge is correct in her assessment that the instant Petition is successive within the meaning of 28 U.S.C. § 2244(b) and that, therefore, this Court lacks jurisdiction to consider Petitioner's claims for relief absent authorization by the Sixth Circuit.

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 18), and GRANTS Respondent's motion to dismiss (doc. 11), but only to the extent that it TRANSFERS this matter pursuant to 28 U.S.C. § 1631 to the United States Court of Appeals for the Sixth Circuit for consideration as to whether the district court may review the

Petition in accordance with 28 U.S.C. § 2244(b).

SO ORDERED.

Dated: April 9, 2013

s/S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge